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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,534	04/08/2004	Boris Bernards	BERNAR-40085	1300
26252	7590	04/07/2006	EXAMINER	
KELLY LOWRY & KELLEY, LLP 6320 CANOGA AVENUE SUITE 1650 WOODLAND HILLS, CA 91367			HOGAN, JAMES SEAN	
			ART UNIT	PAPER NUMBER
			3752	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/821,534		<b>Applicant(s)</b> BERNARDS, BORIS	
	<b>Examiner</b> James S. Hogan		<b>Art Unit</b> 3752	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 03 January 2006.

2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-7 and 9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☐ Claim(s) 1-7 and 9 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All    b) ☐ Some    \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____
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## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,830,434 to Green et al. in view of U.S. Patent No. 5,918,814 to Hough

Green et al. teaches a sprinkler head shield comprising a concave inwardly sloping wall defined by a partially circular, single-piece curved plate (30), a lip extending horizontally away from the wall along an upper perimeter thereof (31). Green et al does teach a notch located substantially near a lower perimeter of the sloping walls, but not configured to accommodate movement of the sprinkler head relative to the plate.

Hough teaches a notch (central hole) of no specific diameter and having anchoring means to (12) for "retaining the body (of the sprinkler shield) about a sprinkler head" with no mention of frictionally engaging the sprinkler head in any way, thus permitting movement of the sprinkler head relative to the plate. Hough teaches apertures (23) along a sloping wall spaced about a sloped wall. As for claim 3, the mounting system of

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Hough, which utilizes spikes (60) mounted through apertures (23) in the wall, can substitute for the integrated spikes found on the shield of Green et al., and as per claim 4, uses spikes that include a head (61) made larger than the aperture. As per claims 5 and 9, the notch of Green et al is centrally located with the respect to the shield, and the walls slope inwardly towards the notch. It would have been obvious to one skilled in the art at the time the invention was made to have modified the shield of Green et al with the sprinkler-accommodating centrally-located notch and the apertures and spikes of Hough in order to create a sprinkler shield that can be held stationary in view of a rotating sprinkler with an anchoring system with external fasteners that would be more economical to manufacture.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,830,434 to Green et al. in view of U.S. Patent No. 5,918,814 to Hough and further in view of U.S. Patent 6,209,803 to Colo'n.

As per claim 6, Green et al., as modified by Hough in the rejection of claim 1 above does not teach walls on the opposite sides of the notch extending a distance therefore creating an elongated slot. The shield of Colo'n ('803) teaches, via Figure 7, a U-shaped shield (61) designed as a sprinkler shield having an elongated slot. Further, the shield includes an insert (70) slidable into a groove (22b, see Figure 4) surrounding the elongated slot for adjusting the size and shape of the slot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the shield of Green et al. with the elongated slot and insert of Col'n in order to shield surfaces from a sprinkler that are placed near a wall.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Hogan whose telephone number is (571) 272-4902. The examiner can normally be reached on Mon-Fri, 7:00a-4:00p EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Scherbel can be reached on (571) 272-4919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JSH  
3/20/2006

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TC 3700